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ON BEHALF OF  
NORTH DAKOTA AGRICULTURE COMMISSIONER ROGER JOHNSON

BEFORE THE

HOUSE COMMITTEE ON AGRICULTURE, SUBCOMMITTEE ON CONSERVATION,  
CREDIT, RURAL DEVELOPMENT AND RESEARCH

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Chairman Lucas and members of the Subcommittee, I am Jim Gray, Pesticide Registration Coordinator with the North Dakota Department of Agriculture. I am here today on behalf of North Dakota Agriculture Commissioner Roger Johnson. I would like to offer comments on EPA's pesticide program, specifically the work that the Agency does in the area of pesticide harmonization.

I frequently work with EPA's Office of Pesticide Programs staff on pesticide registration and regulatory issues, especially staff from the EPA's Registration Division. I have the highest regard for the work that EPA does in regulating pesticides to ensure that their use does not result in unreasonable adverse effects to human health and the environment. EPA's pesticide regulatory programs are widely considered to be the most rigorous in the entire world, setting the standard for how pesticides are evaluated for their effects on health and safety. Furthermore, the U.S. food supply is the safest in the world, due in large part to EPA's pesticide registration and regulatory programs.

**EPA participates in the NAFTA Technical Working Group**

I would like to especially call the Subcommittee's attention to the work that EPA does in the area of North American pesticide harmonization as part of the Agency's participation on the NAFTA Technical Working Group (TWG) on Pesticides. The TWG contains pesticide staff from the U.S. EPA, Canada's Pest Management Regulatory Agency (PMRA), and Mexico's CICOPAFEST. The TWG was formed shortly after NAFTA was implemented when it became evident that country-specific pesticide laws and regulatory processes created a barrier to the free trade of pesticides and pesticide-treated commodities.

Although the term "pesticide harmonization" can differ among stakeholders, I think that we cannot claim that we are harmonized until we create a system that meets all four of the following criteria: A) free trade in pesticide-treated commodities across North America, B) free trade in

pesticides among North American countries, C) equal access to pesticide uses so that growers in all three countries can have similar pest management tools, and D) similar pesticide registration requirements and systems in all three countries so that registrants can obtain pesticide registrations with similar data and along similar timelines in each country. As a member of the NAFTA TWG, EPA continues to work with its counterpart pesticide regulatory agencies in Canada and Mexico to address all four of these areas in an effort to share resources and workloads, put pesticide users on a level playing field across North America, eliminate trade irritants, and give registrants greater predictability.

### **Segmented U.S./Canadian pesticide markets results in pesticide price disparities**

Pesticide harmonization is a high-priority issue in northern border states like North Dakota, especially as it pertains to creating a North American market for pesticides. Barriers currently exist in federal laws and regulations that prevent U.S. farmers from importing and using lower-priced Canadian pesticides without the consent of pesticide manufacturers, even if a Canadian product is identical to one registered for use in the United States. This is fundamentally unfair since Canadian grain produced with those lower-priced pesticides competes with American grain on the open market.

At the center of the issue is the fact that any pesticide products entering the U.S. for use by farmers must contain EPA-approved labeling that explains how to properly use the product. However, at the present time, Canadian products are labeled with Canadian labels, and U.S. products are labeled with U.S. labels. Federal regulations allow pesticide manufacturers to control who re-labels their products, and farmers cannot re-label Canadian products with U.S. labels without the manufacturer's consent, even if the two products are identical. Specifically, 40CFR167.3 defines pesticide production as including labeling and re-labeling. Furthermore, Section 7 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires that all pesticide production occur at establishments that have been registered with EPA. As a result, U.S. growers are unable to re-label and import lower-priced Canadian pesticides, and manufacturers have been able to profit from this system of artificially-segmented markets.

This system of segmented pesticide markets has resulted in pesticide price disparities across the U.S./Canadian border with significant economic impacts to American farmers. For example, the North Dakota Department of Agriculture has tracked the retail prices of 35 commonly-used herbicides between North Dakota and Saskatchewan since the year 2000 (Table 1 below). It should be noted that some pesticides are cheaper in ND than SK, while others are more expensive in ND than SK. The "ND Cost" column was calculated by multiplying the cost difference per acre by the number of treated acres for those pesticides that are cheaper in SK than ND. The "ND Benefit" column was calculated by multiplying the cost difference per acre by the number of treated acres for those products that were cheaper in ND than SK.

*Table 1. Tracking the statewide impact of ND/SK pesticide price disparities for 35 common herbicides.*

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Year	ND Cost <sup>a</sup>	ND Benefit <sup>b</sup>	Net Total Cost to ND <sup>c</sup>	Exchange Rate
Million USD				
2000	24.8	7.0	17.8	0.67341
2001	23.2	8.0	15.2	0.64577
2002	21.5	6.6	15.5	0.63686
2003	13.9	15.0	(1.1)	0.71575
2004	21.4	31.1	(9.7)	0.76967
2005	14.9	36.4	(21.5)	0.82586

<sup>a</sup>Total ND Cost for only those herbicides more expensive in ND than SK

<sup>b</sup>Total ND Cost for only those herbicides more expensive in SK than ND

<sup>c</sup>Calculated by subtracting ND Benefit from ND Cost

From 2000 to 2002, the majority of herbicides used in ND were cheaper in SK than ND, and ND farmers could have saved over \$20 million per year if they could have accessed their herbicides at SK prices. Even after subtracting those products cheaper in ND, the net cost still weighed heavily against the ND farmer. In 2003, ND farmers essentially broke even, meaning that just as many products were cheaper in ND as they were in SK. In both 2004 and 2005, the price disparity swung to the overall benefit of ND farmers, although ND farmers could have saved \$21.4 million and \$14.9 million in 2004 and 2005, respectively, if they could have accessed some products at SK prices.

It should be noted that the actual costs of most herbicide products did not change significantly from 2000 to 2005. Instead, the major factor affecting the pesticide price disparities between ND and SK was the exchange rate between the U.S. and Canadian dollar. For reference, the exchange rate increased over 22 percent from 2000 to 2005. However, although the current exchange rate favors ND when it comes to price disparities, the USD will eventually strengthen, meaning that U.S. farmers will once again experience the pesticide price disparity burden seen in the early 2000's. As a result, we continue to fight to de-segment the U.S./ Canadian pesticide markets and eliminate barriers to the cross-border access to identical or substantially similar pesticide products.

I would like to stress that although North Dakota and Montana growers have been most vocal on this issue, the pesticide price disparities resulting from artificially-segmented markets has national impact. A 2005 study from the Center for Agricultural Policy and Trade Studies at North Dakota State University concluded that U.S. farmers and ranchers would save \$178 million per year if they could purchase pesticides at Canadian prices. The National Association of State Departments of Agriculture (NASDA), representing the commissioners, secretaries, and directors of state departments of agriculture in the fifty states and four U.S. territories, has supported efforts to de-segment the U.S. and Canadian pesticide markets for many years. In addition, senior agriculture officials from 15 Mexican states, 16 U.S. states, and 8 Canadian provinces sent a letter to both the U.S. Congress and Canadian Parliament in August 2006 to recommend passage of legislation that would mandate the use of joint U.S.-Canadian pesticide labeling whenever identical products were registered in both countries.

## **TWG formed a sub-team to eliminate regulatory barriers to NAFTA pesticide labeling**

At the NAFTA TWG stakeholder meeting in December 2005, U.S. and Canadian growers strongly requested that the TWG form a sub-team of regulators, growers, and registrants to specifically look at strategies to create a North American market for pesticides. This sub-team would compliment other TWG sub-teams that are addressing other pesticide harmonization issues. The TWG agreed to the request, forming the sub-team to look at both short-term and long-term strategies to de-segment the U.S. and Canadian pesticide markets and allow for the cross-border movement of products. The sub-team contains staff from the U.S. EPA and Canadian PMRA, and registrant and grower representatives from both the U.S. and Canada. Recently, the sub-team was expanded to include pesticide retailers and distributors. I am also a member of the sub-team as the lone state pesticide regulator.

I am happy to say that the NAFTA TWG sub-team has made considerable progress since its formation less than a year ago. Much of the credit should go to Lois Rossi, Director of EPA's Registration Division and chair of the sub-team.

The ultimate long-term means to create a joint U.S./Canadian pesticide market is through use of pesticide labeling that meets the regulatory needs of both countries. This would negate the need for pesticide containers to be re-labeled prior to crossing the border, thereby allowing pesticide products to move freely based solely on market forces. For reference, such labeling is commonly called "NAFTA labeling", although we are focused solely on joint U.S./Canadian labeling at the present time. We are hopeful that Mexican regulators and stakeholders will take part in the NAFTA labeling sub-team in the future.

The sub-team is exploring various formats for NAFTA labeling, including dual labeling (packaging with a U.S. label on one side and the Canadian label on the other), joint labeling (combining Canadian and U.S. label language into one joint document on the container), use of electronic labeling (package label would contain minimal information such as ingredients and emergency contact information, with an internet URL to download the U.S. or Canadian label), and use of supplemental labeling (similar to the electronic label model, but the country-specific label would be distributed in hard-copy form at the retailer). I am confident that NAFTA labeling is possible from both a regulatory and process perspective, although the sub-team has not yet settled on the ideal format for these documents. In the future, we will also need to discuss strategies to result in the widespread adoption and use of NAFTA labeling by registrants.

## **Use of an Own Use Import system as a short-term solution**

Even though the sub-team has made a considerable amount of progress in identifying and resolving remaining barriers to the use of NAFTA labeling to de-segment the U.S. and Canadian pesticide markets, we are several years away from packages with NAFTA labels reaching the marketplace. Further, without a law or regulation requiring registrants to use NAFTA labeling, there is no reason to believe that simply making it available will lead to registrants discontinuing

their current practices. Therefore, the sub-team is exploring short-term strategies that will allow for the cross-border movement of pesticides until we do see widespread adoption of NAFTA labels.

In the mid-1990s, Canada's PMRA created the Own Use Import (OUI) permit system to allow Canadian growers to access certain U.S. pesticides. The OUI system allows Canadian growers to import U.S. pesticides that are identical to products registered in Canada, but only for the grower's own use. The OUI has had limited use by Canadian growers until recently because the importer is required to pay for the chemical analysis required to prove the two formulations are identical. In addition, because the grower assumes all liability for crop injury and non-performance, the cross-border price disparities were seldom large enough to make the OUI option attractive. In fact, less than 10 liters of U.S. products were imported through the OUI for the first ten years of the program's existence.

This changed in 2005 when price disparities were large enough to make the OUI permit system an attractive option for Canadian farmers. Also, many Canadian growers banded together to share the costs of chemical analysis and shipping of U.S. products. In 2005, approximately 5.75 million liters of U.S. glyphosate products were imported into Canada, resulting in savings of over \$20 million in Saskatchewan alone.

Unfortunately, a system to compliment the Canadian OUI system does not exist for U.S. growers. Therefore, the TWG sub-team has initiated a pilot program to determine whether a U.S. version of the Canadian OUI system is a viable short-term option to allow U.S. growers to access certain Canadian pesticides. Under the pilot, certain Canadian retailers and distributors will obtain EPA establishment numbers, thereby allowing them to re-label the Canadian pesticides with the consent of the product registrant. Like the Canadian OUI, U.S. farmers would only be able to access certain Canadian products, and import would be limited to products for a farmer's own use.

Two registrants have volunteered use of some of their products for this pilot, and we will likely see the cross-border movement of these pesticides in time for the 2007 use season. Please note, however, that this is a limited number of products. Also, this short-term solution is a less-than-ideal option because it forces U.S. growers to by-pass their local chemical dealers. However, it is a step toward a joint U.S./Canadian pesticide market.

### **Legislative solutions may be needed for adoption of NAFTA pesticide labels**

We are almost certain that we can eliminate any regulatory barriers to the use of NAFTA labeling. We will then need to create a system that will result in the widespread adoption of NAFTA labeling on the part of registrants. To date, registrant participation in the process has been positive, and we are looking at creating solutions that will benefit all stakeholders. Doing so will make use of NAFTA labeling an attractive, voluntary option for some registrants.

However, we may well reach a day when we are back in front of the U.S. Congress to discuss statutory changes needed for the widespread adoption of NAFTA pesticide labeling. This may

be the creation of incentives for pesticide registrants to use NAFTA labeling, such as extending the period of time that registrants retain exclusive use of intellectual property. This could also involve the creation of a requirement for registrants to use NAFTA labeling whenever the identical or substantially-similar formulation is registered in both the U.S. and Canada. In the meantime, we remain committed to allowing the NAFTA labeling sub-team to find administrative solutions. It should be noted that Commissioner Johnson and many of our farmers are growing impatient. Cross border price disparities have been an issue in North Dakota for at least 10 years.

We may also be in front of this body to discuss better and more efficient ways to verify that U.S. and Canadian formulations are identical. Formulation composition information is highly sensitive information, so much so that it is treated as confidential business information. EPA receives Confidential Statements of Formula from registrants as part of the U.S. pesticide registration process. Canada's PMRA also receives formulation information for products registered in Canada. However, EPA and PMRA cannot legally exchange that formulation information with each other. As a result, we depend on registrants to verify whether or not a lower-priced Canadian pesticide is identical to one registered in the U.S. and vice versa. Some registrants are cooperative to these inquiries, while others are sensitive to the market implications that may arise from verifying identity. We may very well need to amend federal law to allow EPA to exchange pesticide formulation information with Canada's PMRA.

## **Summary**

For many years, agriculture has been a global industry. Much of the grain produced by U.S. farmers is exported to foreign markets, and pesticide-treated commodities are shipped to the U.S. daily to compete with commodities produced domestically. U.S. growers can import virtually all of their inputs from Canada, including seed, fertilizer, and machinery. These decisions on whether or not to import these Canadian inputs are largely business decisions independent of the manufacturer's consent.

However, U.S. growers still cannot import Canadian pesticides without the consent of the pesticide manufacturer. This is fundamentally unfair, especially when Canadian grain treated with Canadian pesticides continues to flow into the U.S. every day to compete with the grain produced here.

In addition to being unfair, this is a clear violation of NAFTA. Article 102 of NAFTA describes the objective of the Agreement to be, in part, to "...eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties." Clearly, the current system of country-specific pesticide labeling presents a clear barrier to the cross-border movement of pesticides.

I am hopeful that we can find a win-win scenario that will result in the widespread adoption and use of NAFTA labeling in the near future. To their credit, some registrants have joined the process, realizing that the time has come to de-segment the U.S. and Canadian markets and allow for the cross-border movement of products. On behalf of the North Dakota Agriculture

Commissioner, I would like to publicly thank those pesticide registrants who have been working with us to create both short-term and long-term strategies to allow U.S. farmers to import and use Canadian pesticides. Finally, I would once again thank EPA for its leadership in this issue and helping to keep stakeholders focused on resolving barriers to the use of NAFTA labeling.

I thank the Subcommittee for the opportunity to offer comments on EPA's pesticide registration program on pesticide harmonization. I would be happy to answer any questions.